

SPILL PREVENTION AND CONTROL
§§327.1-327.5, 327.31

§327.1. Applicability.

(a) This chapter applies to discharges or spills that result in a release to the environment within the territorial limits of the State of Texas, including the coastal waters of this state.

(b) This chapter does not apply to:

(1) discharges or spills of oil that enter or threaten to enter coastal waters of the State. Except for spills of oil of 240 barrels or less for which the Railroad Commission of Texas is the on-scene coordinator, such discharges or spills are regulated by the Texas General Land Office under the Oil Spill Prevention and Response Act of 1991, the Texas Natural Resources Code, Chapter 40, Subchapters C,D,E,F, and G;

(2) spills or discharges from activities subject to the jurisdiction of the Railroad Commission of Texas under the Texas Water Code, §26.131;

(3) releases only to air;

(4) the lawful placement of waste or accidental discharge of material into a solid waste management unit registered or permitted under Chapter 335, Subchapter A of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste in General);

(5) units and activities regulated under the authority of the Texas Water Code, Chapter 26, Subchapter I (relating to Underground and Aboveground Storage Tanks);

(6) the lawful application of materials, including but not limited to fertilizers and pesticides, to land or water;

(7) discharges that are authorized by a permit, order, or rule issued under federal law or any other law of the State of Texas; provided, however, that discharges not so authorized shall be reported under this chapter unless the permit, order, or another commission rule provides an applicable reporting requirement;

(8) discharges or spills that are continuous and stable in nature, and are reported to the United States Environmental Protection Agency (EPA) under 40 Code of Federal Regulations (CFR) §302.8; and

(9) discharges or spills occurring during the normal course of rail transportation.

§327.2. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

Agency on-scene coordinator - The official designated by the executive director to coordinate and direct agency responses, or to oversee private responses to discharges or spills.

Coastal waters - The definition of Coastal waters as it appears in Title 31, Texas Administrative Code, §19.2 (relating to Definitions) of the Texas General Land Office rules.

Discharge or spill - An act or omission by which oil, hazardous substances, waste, or other substances are spilled, leaked, pumped, poured, emitted, entered, or dumped onto or into waters in the State of Texas or by which those substances are deposited where, unless controlled or removed, they may drain, seep, run, or otherwise enter water in the State of Texas.

Emergency response team - A unit of the agency that is responsible for the coordination of response to spills and discharges under the agency's jurisdiction.

Environment - Waters in the state, land surface or subsurface strata, for purposes of this chapter only.

Facility - Any structure or building, including contiguous land, or equipment, pipe or pipeline, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, aircraft, or any site or area where a discharge or spill has occurred or may occur.

Hazardous substance - Any substance designated as such by the administrator of the United States Environmental Protection Agency under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 - 9675, regulated under the Clean Water Act, §311, 33 U.S.C. 1321, or designated by the commission.

Industrial solid waste - Solid waste, as defined in §335.1 of this title (relating to Definitions), resulting from or incidental to any process of industry or manufacturing, or mining, or agricultural operations, which may include hazardous waste as defined in §335.1 of this title.

Oil - Oil of any kind or in any form including but not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include used oil, petroleum product, or oil designated as a hazardous substance in 40 CFR §302.4.

Other substances - Substances that may be useful or valuable and therefore are not ordinarily considered to be waste, but that will cause pollution if discharged into water in the state.

Petroleum product - A petroleum substance obtained from distilling and processing crude oil that is liquid at standard conditions of temperature and pressure, and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including but not necessarily limited to motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and #1 and #2 diesel. The term does not include naphtha-type jet fuel, kerosene-type jet fuel, or a petroleum product destined for use in chemical manufacturing or feedstock of that manufacturing.

Petroleum storage tank (PST) exempted facilities - Electric service facilities including generation, transmission, distribution equipment and transformers; petrochemical plants; petroleum refineries; bulk loading facilities; and pipelines that are exempted from the Aboveground Storage Tank (AST) program under §334.123(a)(9) and §334.123(b) of this title (relating to Statutory Exemptions for ASTs), and §334.124(a)(4) of this title (relating to Commission Exclusions for ASTs).

Pipeline - A pipeline is:

(A) an interstate pipeline facility, including gathering lines and any aboveground storage tank connected to such facility, if the pipeline facility is regulated under:

(i) the Natural Gas Pipeline Safety Act of 1968 (49 United States Code §1671, et seq.); or

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 United States Code §2001, et seq.).

(B) an intrastate pipeline facility or any aboveground storage tank connected to such a facility, if the pipeline facility is regulated under one of the following state laws:

(i) the Natural Resources Code, Chapter 111;

(ii) the Natural Resources Code, Chapter 117; or

(iii) Texas Civil Statutes, Article 6053-1 and 6053-2.

Pollution - The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

Responsible person - A person who is:

(A) the owner, operator, or demise charterer of a vessel from which a discharge or spill emanates; or

(B) the owner or operator of a facility from which a discharge or spill emanates; or

(C) any other person who causes, suffers, allows, or permits a discharge or spill.

Used oil - Oil that has been refined from crude oil, or synthetic oil, that as a result of use has been contaminated by physical or chemical impurities.

Vessel - Every description of watercraft, used or capable of being used as a means of transportation on the water.

Water or water in the state - Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all water-courses and bodies of surface waters, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

Adopted April 24, 1996

Effective May 23, 1996

§327.3. Notification Requirements.

(a) Reportable discharge or spill. A reportable discharge or spill is a discharge or spill of oil, petroleum product, used oil, hazardous substances, industrial solid waste, or other substances into the environment in a quantity equal to or greater than the reportable quantity listed in §327.4 of this title (relating to Reportable Quantities) in any 24-hour period.

(b) Initial notification. Upon the determination that a reportable discharge or spill has occurred, the responsible person shall notify the agency as soon as possible but not later than 24 hours after the discovery of the spill or discharge.

(c) Method of notification. The responsible person shall notify the agency in any reasonable manner including by telephone, in person, or by any other method approved by the agency. In all cases, the initial notification shall provide, to the extent known, the information listed in subsection (d) of this section. Notice provided under this section satisfies the federal requirement to notify the State Emergency Response Commission in the State of Texas. The responsible person shall notify one of the following:

- (1) the State Emergency Response Center at 1-800-832-8224;
- (2) during normal business hours only, the regional office for the agency region in which the discharge or spill occurred; or
- (3) the agency at the agency 24-hour spill reporting number

(d) Information required in initial notification. The initial notification shall provide, to the extent known, the information in the following list. Copies of spill reports prepared for other governmental agencies shall satisfy this requirement if they contain, or are supplemented to contain, all the information required by this subsection. The initial notification shall contain:

- (1) the name, address and telephone number of the person making the telephone report;
- (2) the date, time, and location of the spill or discharge;
- (3) a specific description or identification of the oil, petroleum product, hazardous substances or other substances discharged or spilled;
- (4) an estimate of the quantity discharged or spilled;
- (5) the duration of the incident;
- (6) the name of the surface water or a description of the waters in the state affected or threatened by the discharge or spill;
- (7) the source of the discharge or spill;
- (8) a description of the extent of actual or potential water pollution or harmful impacts to the environment and an identification of any environmentally sensitive areas or natural resources at risk;
- (9) if different from paragraph (1) of this subsection, the names, addresses, and telephone numbers of the responsible person and the contact person at the location of the discharge or spill;
- (10) a description of any actions that have been taken, are being taken, and will be taken to contain and respond to the discharge or spill;
- (11) any known or anticipated health risks;

(12) the identity of any governmental representatives, including local authorities or third parties, responding to the discharge or spill; and

(13) any other information that may be significant to the response action.

(e) Update notification. The responsible person shall notify the agency as soon as possible whenever necessary to provide information that would trigger a change in the response to the spill or discharge.

(f) Correction of records. Notifying the agency that a reportable discharge or spill has occurred shall not be construed as an admission that pollution has occurred. Furthermore, if the responsible person determines, after notification, that a reportable discharge or spill did not occur, the responsible person may send a letter to the agency documenting that determination. If the executive director agrees with that determination, the executive director will note the determination in commission records. If the executive director disagrees with that determination, the executive director will notify the responsible person within 30 days.

(g) Notification of local governmental authorities. If the discharge or spill creates an imminent health threat, the responsible person shall immediately notify and cooperate with local emergency authorities (fire department, fire marshall, law enforcement authority, health authority, or Local Emergency Planning Committee (LEPC), as appropriate). The responsible party will cooperate with the local emergency authority in providing support to implement appropriate notification and response actions. The local emergency authority, as necessary, will implement its emergency management plan, which may include notifying and evacuating affected persons. In the absence of a local emergency authority, the responsible person shall take reasonable measures to notify potentially affected persons of the imminent health threat.

(h) Notification to property owner and residents. As soon as possible, but no later than two weeks after discovery of the spill or discharge, the responsible person shall reasonably attempt to notify the owner (if identifiable) or occupant of the property upon which the discharge or spill occurred as well as the occupants of any property that the responsible person reasonably believes is adversely affected.

(i) Additional notification required.

(1) Except as noted in paragraph (2) of this subsection, complying with the notification requirements set forth in this section does not relieve, satisfy, or fulfill any other notification requirements imposed by permit or other local, state, or federal law.

(2) Notice provided under this section satisfies the federal requirement to notify the State Emergency Response Commission in the State of Texas.

(j) Alternative notification plans.

(1) Responsible persons in charge of activities and facilities may submit and implement an alternative notification plan. This alternative notification plan shall comply with the Texas Water Code,

§26.039. Responsible persons shall obtain the agency's written approval before implementing any alternative notification plan.

(2) Upon approval of the agency regional manager, responsible persons may provide the initial notification by facsimile to the regional office during normal business hours.

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§327.4. Reportable Quantities.

(a) Hazardous substances. The reportable quantities for hazardous substances shall be:

(1) for spills or discharges onto land - the quantity designated as the Final Reportable Quantity (RQ) in Table 302.4 in 40 CFR §302.4; or

(2) for spills or discharges into waters in the state - the quantity designated as the Final RQ in Table 302.4 in 40 CFR §302.4, except where the Final RQ is greater than 100 pounds in which case the RQ shall be 100 pounds.

(b) Oil, petroleum product, and used oil.

(1) The RQ for crude oil and oil other than that defined as petroleum product or used oil shall be:

(A) for spills or discharges onto land - 210 gallons (five barrels); or

(B) for spills or discharges directly into water in the state - quantity sufficient to create a sheen.

(2) The RQ for petroleum product and used oil shall be:

(A) except as noted in subparagraph (B) of this paragraph, for spills or discharges onto land - 25 gallons;

(B) for spills or discharges to land from PST exempted facilities - 210 gallons (five barrels); or

(C) for spills or discharges directly into water in the state - quantity sufficient to create a sheen.

(c) Industrial solid waste or other substances. The RQ for spills or discharges into water in the state shall be 100 pounds.

Adopted April 24, 1996

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§327.5. Actions Required.

(a) The responsible person shall immediately abate and contain the spill or discharge and cooperate fully with the executive director and the local incident command system. The responsible person shall also begin reasonable response actions which may include, but are not limited to, the following actions:

- (1) arrival of the responsible person or response personnel hired by the responsible person at the site of the discharge or spill;
- (2) initiating efforts to stop the discharge or spill;
- (3) minimizing the impact to the public health and the environment;
- (4) neutralizing the effects of the incident;
- (5) removing the discharged or spilled substances; and
- (6) managing the wastes.

(b) Upon request of the local government responders or the executive director, the responsible person shall provide a verbal or written description, or both, of the planned response actions and all actions taken before the local governmental responders or the executive director arrive. When the agency on-scene coordinator requests this information, it is subject to possible additional response action requirements by the executive director. The information will serve as a basis for the executive director to determine the need for:

- (1) further response actions by the responsible person;
- (2) initiating state funded actions for which the responsible person may be held liable to the maximum extent allowed by law; and
- (3) subsequent reports on the response actions.

(c) Except for discharges or spills occurring during the normal course of transportation about which carriers are required to file a written report with the U.S. Department of Transportation under 49 CFR §171.16, the responsible person shall submit written information, such as a letter, describing the details of the discharge or spill and supporting the adequacy of the response action, to the appropriate TNRCC regional manager within 30 working days of the discovery of the reportable discharge or spill. The regional manager has the discretion to extend the deadline. The documentation shall contain one of the following items:

- (1) A statement that the discharge or spill response action has been completed and a description of how the response action was conducted. The statement shall include the initial report information required by §327.3(c) of this title (relating to Notification Requirements). The executive director may request additional information. Appropriate response actions at any time following the discharge or spill include use of the Risk Reduction Rules in §335.8 of this title (relating to Closure) or other appropriate agency risk-based corrective action programs.

(2) A request for an extension of time to complete the response action, along with the reasons for the request. The request shall also include a projected work schedule outlining the time required to complete the response action. The executive director may grant an extension up to six months from the date the spill or discharge was reported. Unless otherwise notified by the appropriate regional manager or the Emergency Response Team, the responsible person shall proceed according to the terms of the projected work schedule.

(3) A statement that the discharge or spill response action has not been completed nor is it expected to be completed within the maximum allowable six month extension. The statement shall explain why completion of the response action is not feasible and include a projected work schedule outlining the remaining tasks to complete the response action. This information will also serve as notification that the response actions to the discharge or spill will be conducted under the Risk Reduction Rules in §335.8 of this title (relating to Closure) or other commission risk-based corrective action rules, and shall indicate the appropriate risk-based corrective action program.

Adopted December 4, 1996

Effective December 26, 1996

§327.31. Natural Resource Damage Assessment for Oil Spills in Coastal Waters.

Pursuant to a joint negotiated rulemaking mandated under Senate Bill 1049, 73rd Legislature, 1993, the Texas Natural Resource Conservation Commission incorporates by reference the provisions of 31 TAC §§20.1-20.4, 20.10, 20.20-20.23, 20.30-20.36, and 20.40-20.44, concerning Natural Resource Damage Assessment, as adopted by the Texas General Land Office, effective October 19, 1994.

Adopted December 21, 1994

Effective January 11, 1995